IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| JOSEPHINE O'BRIEN, mother and parent on behalf of minor-plaintiffs, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN and JOHN JOSEPH O'BRIEN, IV | : | CIVIL ACTION |
| | : | NO. 03-CV-5695 |
| v. | : | |
| VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a THE CROSSROADS SCHOOL | : | |

**SURRICK, J.** **NOVEMBER 10, 2004**

**MEMORANDUM & ORDER**

Presently before the Court is the Motion of Defendant Valley Forge Specialized Educational Services, d/b/a The Crossroads School, Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 2). For the following reasons, Defendant's Motion will be granted.

## I. BACKGROUND

This action arises out of exactly the same circumstances as the case of *O'Brien v. Valley Forge Specialized Educ. Servs. Corp.*, No. 03-CV-3984, a case recently decided by this Court.[1] John J. O'Brien III and Josephine O'Brien (collectively "the O'Briens") enrolled their son, John J. O'Brien, IV, at The Crossroads School ("Crossroads" or "Defendant"), a private primary school. (Compl. ¶¶ 1-2.) In 1999, the O'Briens became dissatisfied with their son's academic performance at Crossroads, placed him in a public school, and refused to pay the outstanding

[1]On October 13, 2004, we filed a Memorandum and Order dismissing Civil Action No. 03-cv-3984. The facts and the law recited in that Memorandum are incorporated herein.

tuition to Crossroads. (*Id.*) In response, Crossroads sued the O'Briens for breach of contract in the Court of Common Pleas of Chester County and was awarded a judgment in the amount of $15,134.00, the sum of the unpaid tuition. *Valley Forge Specialized Educ. Servs. v. O'Brien*, No. 99-9565, slip op. at 1-2, 9 (Pa. Ct. Com. Pl. June 22, 2001).[2] Crossroads proceeded to execute on its judgment and attached bank accounts purportedly held by the O'Briens. (Compl. ¶¶ 1-6.) The O'Briens then filed a motion seeking to vacate the attachments, arguing that they were illegally executed on bank accounts that were being held in trust for the O'Briens' children, who were not parties to the litigation. *Valley Forge Specialized Educ. Servs. v. O'Brien*, 828 A.2d 410 (Pa. Super. Ct. 2003) (table). The trial court denied the O'Briens motion to vacate the attachments. The Superior Court of Pennsylvania affirmed. *Id.*

John J. O'Brien III then brought the aforementioned Civil Action No. 03-cv-3934, which we dismissed. *O'Brien v. Valley Forge Specialized Educ. Servs.*, No. 03-CV-3984, 2004 WL 2316425 (E.D. Pa. Oct. 13, 2004). Josephine O'Brien now brings this action against Crossroads on behalf of her four minor children, Simone O'Brien, Briana O'Brien, Danielle O'Brien, and John Joseph O'Brien, IV (collectively "Plaintiffs"). Although Plaintiffs' Complaint is not a model of clarity, it appears to allege two claims: (1) that the attachment of the O'Briens' children's bank accounts violated their Due Process rights under the Fourteenth Amendment, and (2) that the process used to collect the O'Briens' unpaid tuition violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* (Compl. ¶¶ 3, 6, 14.) Defendant responded

[2] The O'Briens filed an appeal from this decision. The appeal was quashed by the Pennsylvania Superior Court on September 10, 2002. That court found that the "rambling" and "largely incomprehensible" arguments precluded meaningful appellate review. *Valley Forge Specialized Educ. Servs. v. O'Brien*, 823 A.2d 145 (Pa. Super. Ct. 2002) (table).

by filing a Rule 12(b)(6) motion to dismiss, arguing that Plaintiffs' claims violate the *Rooker-Feldman* doctrine because they seek to relitigate issues previously decided in state court. (Doc. No. 2.)

## II. STANDARD

When considering a Rule 12(b)(6) motion to dismiss, we must "accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party." *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989). The court may dismiss a complaint only if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). When considering a motion to dismiss, we need not credit a plaintiff's "bald assertions" or "legal conclusions." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

## III. DISCUSSION

### A. Due Process Claim

Defendant first argues that Plaintiffs' federal due process claims are prohibited under the *Rooker-Feldman* doctrine. (Doc. No. 2.) We agree. The *Rooker-Feldman* doctrine bars a lower federal court from reviewing claims that were either "actually litigated" in state court or are "inextricably intertwined" with the prior state court action. *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 419 (3d Cir. 2003). For the reasons discussed in our Memorandum and Order in Civil Action No. 03-cv-3984, we conclude that Plaintiffs' federal due process claims are "inextricably intertwined" with the prior state court action. *O'Brien*, 2004 WL 2316425, at *3-7.

The only remaining issue is whether the Plaintiffs in this case—Mrs. O'Brien, acting on behalf of her four minor children—are in privity with defendants in the state court action.

The *Rooker-Feldman* binds not only the parties to the prior state court suit, but also their privities. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 364 F.3d 102, 105 (3d Cir. 2004); *see also ITT Corp.*, 366 F.3d at 216 ("[C]laims and issues decided against an entity bind also its parties in privity for *Rooker-Feldman* purposes."). Privity "refers to a cluster of relationships . . . under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party." Restatement (Second) of Judgments, ch. 1 (1982). Pennsylvania courts have defined parties in privity as those that have "mutual or successive relationships to the same right of property," or have "such an identification of interest of one person with another as to represent the same legal right." *Ammon v. McCloskey*, 655 A.2d 549, 554 (Pa. Super. Ct. 1995); *see also Bergdoll v. Commonwealth*, No. 706 M.D. 2003, 2004 Pa. Commw. LEXIS 698, at *23 n.4 (Pa. Commw. Ct. Sept. 16, 2004).

We are satisfied that Plaintiffs are in privity with the Defendants in the state court litigation. "One relationship long held to fall within the concept of privity is that between a nonparty and party who acts as the nonparty's representative." *United States Steel Corp.*, 921 F.2d at 493 (citing *Martin v. Wilks*, 490 U.S. 755, 762 n.2 (1989)); *see also* Restatement (Second) of Judgments § 41(d) (1982) ("A legal representative is found where a party is . . . . [t]he executor, administrator, guardian, conservator, or similar fiduciary manager of an interest of which the person is a beneficiary."). Here, Mrs. O'Brien is acting as her children's representatives, defending their property interests in their bank accounts. In the state court action, Mrs. O'Brien played a similar role, where she and her husband, as named defendants,

acted as the legal representative of her children's interests, filing motions on their behalf in the Court of Common Pleas and the Superior Court seeking to vacate the attachments on their children's bank accounts. *O'Brien*, 2004 WL 2316425, at *7. Clearly, we are prohibited from hearing this matter under *Rooker-Feldman*.

**B. FDCPA Claim**

We must also dismiss Plaintiffs' FDCPA claim because no relief could be granted under the FDPCA based on the facts alleged. The purpose of a Rule 12(b)(6) is to test the legal sufficiency of a complaint. *Winterburg v. CNA Ins. Co.*, 868 F. Supp. 713, 718 (E.D. Pa. 1994), *aff'd*, 72 F.3d 318 (3d Cir. 1995). A court should not dismiss a case for failure to state a claim "'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief.'" *Pryor v. NCAA*, 288 F.3d 548, 559 (3d Cir. 2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); *see also Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1998) ("A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations."). "In evaluating the propriety of the dismissal, we accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002).

The FDCPA "prohibits 'debt collector[s]' from making false or misleading representations and from engaging in various abusive and unfair practices" in the collection of

debts.[3] *Heintz v. Jenkins*, 514 U.S. 291, 292 (1995). Under the statute, a "debt collector" is defined as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6) (2000). There are several enumerated exceptions to this definition. One exception exempts from the Act "any person collecting or attempting to collect any debt owed or due another to the extent such activity . . . concerns a debt which was originated by such person." *Id.* § 1692a(6)(F).

Plaintiffs state in their Complaint that Mr. and Mrs. O'Brien are subject to a judgment for payment of outstanding tuition debt to Defendant in the amount of $15,134.00. (Compl. ¶ 1.) Plaintiffs further allege that Defendant is the party attempting to collect the outstanding tuition debt, and that it has improperly used formal legal processes—namely, obtaining and executing writs of attachments—to collect the unpaid debt. (*Id.* ¶¶ 3, 6-7.) Assuming that these allegations are true, as we must, Plaintiff cannot recover under the FDCPA for two reasons. First, the FDPCA applies only to "debt collectors," which the statute describes as any person or business where "the *principal purpose* of which is the collection of any debts, or who *regularly* collects or attempts to collect debts . . . due or asserted to be owned or due *another*." 15 U.S.C. § 1692a(6) (2000) (emphases added); *see also* S. Rep. No. 95-382, at 3 (1977) ("[T]he primary persons

[3] For example, debt collection practices prohibited by the FDCPA include the use of violence, obscenity, or repeated annoying phone calls, 15 U.S.C. § 1692d (2000), false representations regarding "the character, amount, or legal status of any debt," *id.* § 1692e(2)(A), and other "unfair or unconscionable means to collect or attempt to collect" debt, *id.* § 1692f.

intended to be covered [by the FDCPA] are independent debt collectors."), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1697. Plaintiff does not allege that the principle purpose of the Defendant, a private primary school, is the collecting of debts, or that the school regularly engages in collecting debts owed to another party. Indeed, we wonder how any private school which collects its own tuition payments could fall within the scope of the FDCPA. *See Howard v. Albert Magnus College*, No. 04-CV-784, 2004 U.S. Dist. LEXIS 17847, at *6-7 (D. Conn. Sept. 7, 2004) (dismissing FDCPA claim against private college because it did not qualify a "debt collector").

Second, as mentioned above, the FDCPA specifically exempts parties who "collect[] or attempt[] to collect any debt owed or due another to the extent such activity . . . concerns a debt which was originated by such person." 15 U.S.C. § 1692a(6)(F) (2000). Consequently, a party that is attempting to collect debts owed to itself, and not to another entity or third party, is not subject to liability under the FDCPA. *See, e.g.*, *Montgomery v. Huntington Bank*, 346 F.3d 693, 699 (6th Cir. 2003) (holding that a bank which repossessed an automobile that was collateral for that bank's loan was exempted from the statutory definition of a debt collector); *Flamm v. Sarner & Assocs., P.C.*, No. 02-4302, 2002 U.S. Dist. LEXIS 22255, at *9 (E.D. Pa. Nov. 6, 2002) ("Generally the FDCPA does not govern the activities of a [party] attempting to collect on debts owed directly to themselves."); *Pressman v. Southeastern Fin. Group*, No. 94-5244, 1995 U.S. Dist. LEXIS 17961, at *8 (E.D. Pa. Nov. 19, 1995) ("Creditors collecting their own debts are not covered by the [FDCPA]."). Defendant here was only trying to collect tuition payments owed to it, not to another party. Clearly Defendant falls under this exemption. Because no relief could be granted under the FDCPA for any set of facts consistent with the allegations contained in

Plaintiffs' complaint, Plaintiffs' FDCPA claim must be dismissed.

Additionally, Plaintiffs' FDCPA claim must be dismissed under the *Rooker-Feldman* doctrine. As mentioned above, *Rooker-Feldman* bars a lower federal court from reviewing claims that were either "actually litigated" in state court or are "inextricably intertwined" with the prior state court action. *Desi's Pizza, Inc.*, 321 F.3d at 419. A claim is inextricably intertwined when, in order to grant relief, the federal court would have to (1) "'determine that the state court judgment was erroneously entered'" or (2) "'take action that would render the state court's judgment ineffectual.'" *ITT Corp. v. Intelnet Int'l Corp.*, 366 F.3d 205, 211 (3d Cir. 2004) (quoting *Desi's Pizza, Inc.*, 321 F.3d at 420). If the relief sought by Plaintiff in this Court would have the effect of "undo[ing] or prevent[ing] the enforcement of the state court's order," it would be inextricably intertwined because it would require us to render the state court's judgment ineffectual. *Desi's Pizza, Inc.*, 321 F.3d at 422; *see also id.* ("'If the proposed [relief] were granted, the federal court would effectively reverse the state court judgment, and thus review a final judgment of a state court in judicial proceedings,' contrary to *Rooker-Feldman*.'" (quoting *Stern v. Nix*, 840 F.2d 208, 212 (3d Cir. 1988)) (internal quotations and brackets omitted)).

Here, Plaintiffs allege that Defendant's execution of the writs of attachment on the O'Briens' children's bank accounts violated the FDCPA. *See* Compl. ¶ 3 (stating that Defendant's execution of the attachments violated the FDCPA because they were made "without lawful notice" and did not "compl[y] with appropriate procedural rules"); *id.* ¶¶ 4, 6, 8-12, 14 (asserting various other procedural defects with respect to the execution of the attachments and arguing that they collectively violated the FDCPA). As a remedy, Plaintiffs seek to have this Court set aside the procedurally defective attachments and order restitution and recovery of all

seized funds. (*Id.* at unnumbered pp. 5-6.) Certainly, the FDCPA authorizes a successful plaintiff to "recover 'any actual damages sustained' as a result of the debt collector's violation of the FDCPA." *Weiss v. Regal Collections*, 385 F.3d 337, 340 (3d Cir. 2004) (quoting 15 U.S.C. §§ 1692k(a)(1) (2000)).[4] However, such a remedy would require us to "effectively reverse the state court judgment." *Desi's Pizza, Inc.*, 321 F.3d at 422. It would compel Defendant to return all funds seized from the attached bank accounts. This would have the effect of rendering the state court's orders ineffectual. Moreover, virtually all of the conduct that Plaintiffs contend violates the FDCPA involves the allegedly improper state court rulings and execution of the writs of attachment. (Compl. ¶¶ 4, 6, 8-12, 14.) Under Plaintiffs' FDCPA theory, in order to grant relief, we would be required to find that the state court erred in determining that the execution of the attachments was proper. Obviously, Plaintiffs' FDCPA claim is inextricably intertwined with the prior state court litigation and thus is barred under the *Rooker-Feldman* doctrine.[5]

An appropriate Order follows.

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[4] A successful plaintiff in an FDCPA action can also recover statutory damages up to $1000 for each violation, attorney's fees, and costs. *Weiss v. Regal Collections*, 385 F.3d 337, 340 (3d Cir. 2004) (discussing 15 U.S.C. §§ 1692k(a)(2)(A), (3) (2000)). Plaintiffs, however, do not request this relief in their Complaint.

[5] We caution Plaintiffs' counsel that in light of this decision and our earlier decision in *O'Brien v. Valley Forge Specialized Educ. Servs. Corp.*, No. 03-CV-3984, 2004 WL 2316425 (E.D. Pa. Oct. 13, 2004), any future complaints regarding the subject matter of this litigation may very well run afoul of Fed. R. Civ. P. 11, warranting the imposition of sanctions.

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| JOSEPHINE O'BRIEN, mother and parent on behalf of minor-plaintiffs, SIMONE O'BRIEN, BRIANA O'BRIEN, DANIELLE O'BRIEN and JOHN JOSEPH O'BRIEN, IV | : | CIVIL ACTION |
| | : | NO. 03-CV-5695 |
| v. | : | |
| VALLEY FORGE SPECIALIZED EDUCATIONAL SERVICES d/b/a THE CROSSROADS SCHOOL | : | |

**ORDER**

AND NOW, this 10th day of November, 2004, upon consideration of the Motion of Defendant Valley Forge Specialized Educational Services d/b/a The Crossroads School Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 2), and all papers filed in support thereof and opposition thereto, it is ORDERED that Plaintiffs' Complaint is DISMISSED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge